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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,099	03/27/2001	Jan G.J. van de Winkel	MXI-170	2545

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EXAMINER	
BLANCHARD, DAVID J	
ART UNIT	PAPER NUMBER
1643	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TH

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/820,099	**Applicant(s)** VAN DE WINKEL, JAN G.J.	
	Examiner David J. Blanchard	**Art Unit** 1643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3+1* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1 and 6-12*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

DAVID J. BLANCHARD
PATENT EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): Applicant's reply filed 11/13/2006 has overcome the following objections/rejections set forth in the final Office Action mailed 7/11/2006:
The objection to the specficiation as introducing new matter is withdrawn in view of the amendment to the specfiication, deleting the "incorporated by reference" statement filed 11/13/2006.

Applciants' reply filed 11/13/2006 has overcome the objections to the specfiication for various informalities are withdrawn in view of the amendments to the specification filed 11/13/2006.

The rejection of claims 1, 6, 8 and 11-12 under 35 U.S.C. 102(b) as being anticipated by Mannhalter et al is withdrawn in view of the amendments to the claims.

The rejection of claims 1, 6, 8-11, 26-27 and 29-32 under 35 U.S.C. 102(b) as being anticipated by van Spriel et al as evidenced by Van Egmond et al is withdrawn in view of the amendments to the claims.

The rejection of claims 1, 6-12 and 26-33 under 35 U.S.C. 102(e) as being anticipated by Deo et al as evidenced by Van Egmond is withdarwn in view of the amendments to the claims.

The rejection of claims 25-33 under 35 U.S.C. 112, first paragraph as introducing new matter is withdrawn in view of the cancellation of the claims.

Continuation of 11. does NOT place the application in condition for allowance because: The rejection of claims 1 and 6-12 under 35 U.S.C., first paragraph, as failing to comply with the written description requirement as introducing new matter is maintained.

The reply filed 11/13/2006 states that the invention is based on the discovery that monomeric serum IgA binds to FcalphaRI-expressing cells and causes elimination of antigens bound to monomeric IgA. Applicant again points to the specfiication, which discloses that the first portion of the complex comprises serum (monomeric) IgA and in another embodiment, the first portion of the complex comprises an antibody or fragment thereof which specifically binds FcalphaRI or which specifically binds monomeric IgA. Applicant also points to pp. 3 and 14 of the specification for support that the first portion of the complex comprises monomeric IgA. This has been fully considered but is not found persuasive essentially for reasons of record. While the specification does disclose that the first portion of the complex comprises monomeric IgA, the specification also makes clear that the the the first portion of the complex binds a site on the FcalphaR that is distinct from the natural binding site for IgA, so that binding of the complex is not blocked by endogenous IgA and "it is likely that serum IgA (up to 4.0mg/ml) may interfere with the activity of IgA mAbs under physiological conditions." (pg. 9, lines 7-9). The Federal Circuit has pointed out that under United States law, a description that does not render a claimed invention obvious cannot sufficiently describe the invention for the purposes of the written description requirement of 35 U.S.C. 112. See MPEP 2163(I)(A). The specification as filed appears to disclose (a) the administration of serum IgA (monomeric) complexed with antigen as causing the elimination of antigens bound to monomeric IgA and (b) bispecific antibodies that bind "outside the natural ligand binding domain of the trigger receptor" (specification at pg. 9, lines 19-20) to circumvent interference by serum antibodies. Further, applicants reference to a complex that comprises monomeric IgA linked to a chemotherapeutic agent (specification at pg. 14, lines 22-25) and applicants' reference to the specification (pg. 6) and the working examples (pp. 15-21) which disclose the use of monomeric IgA complexed with a bacteria does not provide adequate written supprot for monomeric IgA linked to an antibody (i.e.., agent) that binds the target cell or antigen because a chemotherapeitc agent would not be considered an agent that binds a target cell or antigen and the claims are not limited to monomeric IgA complexed with an antigen (i.e., bacteria). The claims require linkage to some other agent, which is an antibody (i.e., claim 6) that binds to the target cell or antigen. Further, given that the claims appear to be clearly drawn to bispecific antibodies, the only specific disclsoure pertaining to bispecific antibodies is found at pg. 9, where bispecific antibodies are antigen-binding fragments, not whole immunoglobulins such as "monomeric IgA" and are only disclosed as binding to FcalphaRI outside the natural ligand binding domain of the receptor to avoid interference with the activity of serum IgA under physiooigcal conditions. Thus, the as filed specifiation would not have led the skilled artisan to the current claim limitations because the as filed specification criticizes, discredits, or otherwise discourages the solution presently claimed, i.e., the use of monomeric IgA, which would bind via the Fc region to the natural binding site of the FcalphaRI.
For these reasons and those already of record the rejection is maintained.